

Tax First

Namibia Newsletter

May 2022

A monthly newsletter published by PwC Namibia providing informed commentary on current developments in the local tax arena.

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Also in this Issue:

2	Buying/Selling intangible assets
2	Business School Calendar
3	New Legislation Tracker
3	Tax Calendar—May 2022

Compromise with Creditors

With the continued impact of the pandemic on the Namibian economy and businesses, companies are making alternative arrangements to settle debts that are due.

It is important to analyze such arrangements for their potential tax implications.

Assessed Loss reduction

Section 21(1)(a)(ii) of the Income Tax Act, Act 24 of 1981, provides for the reduction of the assessed loss of a person who benefits from a compromise made with or concession granted by their creditors.

The balance of any assessed loss must be reduced by the amount or value of any benefit received by or accruing to them resulting from a concession granted by or compromise made with their creditors (provided such liabilities arose in the ordinary course of trade).

The above mentioned section stipulates that where a taxpayer **has assessed losses** and where a compromise was made in terms of debt, the **loss should decrease with the benefit so received**.

It is important to note that in terms of case law applicable in Namibia it was held that a loan capitalisation into share capital of the company qualifies as a compromise with creditors, as the obligation to repay the loan is forfeited. Therefore the conversion of debt into share capital will potentially trigger the proviso of Section 21 and may require the reduction of Assessed Losses in the company.

Potential Recoupment implications

Another consideration is whether it can be argued that the nature of the transaction is in effect a loan written off, and subsequently a re-capitalisation of the company.

In terms of the Income Tax Act, a recoupment takes place and there shall be included in the taxpayer's income all amounts which were allowed to be deducted or set off under the provisions of the sections 17 to 21 in the current or prior years (which includes expenses claimed under the general deduction formula and any other specific deductions,) which have been recovered or recouped during the current year of assessment.

Definitions used in several court cases with regards to what it means to recoup/recover an amount would include the waiving of a debt. Where it can be argued that the obligation to repay the loan is extinguished, there is a good chance that a portion of the loan may become taxable. Therefore when a debt is waived a complete analysis must be performed of what the money was used for and which amounts may be taxable.

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VAT Considerations When Buying and Selling Intangible Assets

More often than not, we forget about the **VAT implications** when buying or selling intangible assets such as trademarks and intellectual property, amongst others.

First, we need to identify whether intangibles are classified as goods or services per the VAT Act, 10 of 2000.

'**Goods**' are defined, per the VAT Act, as "corporeal movable or immovable property, thermal or electrical energy, heat, gas, refrigeration, air conditioning and water, but does not include money". If we look at intangibles, for example trademarks and intellectual property, these do not fall within the ambit of the 'goods' definition - but would rather be classified as '**services**'.

This being a service, what are the **VAT considerations**?

A transaction where a registered person in Namibia sells an intangible asset for further use within Namibia will attract VAT at the **standard rate of 15%**. The seller would then have to declare Output VAT on the sale of the intangible asset, if it is intended to be further utilised in Namibia.

The VAT registered buyer will be permitted to claim an input VAT deduction, on condition that:

- The intangible asset will be utilised to generate taxable supplies.

In the event that the intangible asset will be utilised outside Namibia, the seller can charge **VAT at a rate of zero percent**, in terms of Schedule II of the VAT Act.

It is evident that careful consideration should be given when buying/selling intellectual property. We encourage all to consult when in doubt..

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PwC Business School | Upcoming Training Dates

10 May 2022

Affirmative Action Compliance Training
4 hour virtual session

Click here to register:

<https://www.pwc.com/na/en/events/affirmative-action-compliance-training.html>

12 May 2022

IFRS for SMEs Training
5 hour virtual session

Click here to register:

<https://www.pwc.com/na/en/events/ifrs-for-sme-training.html>

12 & 13 May 2022

Soft Skills Training Workshops
3.5 hours per virtual session

Click here to register:

<https://www.pwc.com/na/en/events/soft-skills-training.html>

17 - 19 May 2022

Finance for Non-Finance Managers Session
5 hours per virtual session

Click here to register:

<https://www.pwc.com/na/en/events/finance-for-non-fm.html>

19 May 2022

Bitesize: Managing Tax for Millennials
5 hour virtual session

Click here to register:

<https://www.pwc.com/na/en/events/tax-management-for-millennials.html>

20 May 2022

Corporate Governance Training
4 hour virtual session

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New Tax Legislation Tracker

The following is a status of proposed legislative changes. Based on the Minister of Finance, Hon. Ipumbu Shiimi's 2022/23 Annual Budget Speech on 24 February 2022, all proposals are currently undergoing stakeholder consultations.

Introduction of **Special Economic Zones** (with sunset clause).

Introduce VAT on management fees of listed asset managers

Introduction of 3:1 thin cap ratio on **interest and foreign losses**

VAT zero-rating on **sanitary products**

Introduction of **"trading trusts"** into the definition of a company, thus subjecting it to tax at 32%

Increase tax deductibility of **pension, retirement fund & edu policy contributions** from N\$40,000 to N\$150,000 p.a.

Introduce a 10% **dividend withholding tax** for dividends paid to residents.

Tax Calendar | May 2022



Friday, 20th of May

- VET Levy return;
- Import VAT return;
- PAYE return;
- Withholding Tax returns: Services, Royalties, Interest; NRST

Important Submission dates for May 2022

Friday, 27th of May

- Value Added Tax Return

Tuesday, 31st of May

- Social Security return
- 1st provisional for taxpayers with a November 2022 year-end;
- 2nd provisional for taxpayers with a May 2022 year-end;
- Tax return for companies with a October 2021 year-end;



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